

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

PETER R. TIA,	)	NO. 1:12-cv-00295 LEK/KSC
	)	
Plaintiff,	)	ORDER DENYING MOTION FOR
	)	RECONSIDERATION
vs.	)	
	)	
LYLE ANTONIO, et al.,	)	
	)	
Defendants.	)	
_____	)	

**ORDER DENYING MOTION FOR RECONSIDERATION**

Before the court is Petitioner's "Notice of Appearance of 12-19-2011 Document in Supp[or]t of Reconsideration from 7-26-12 Case Dismissal." Mot., ECF #11. Plaintiff seeks reconsideration of the Order dismissing his Complaint as frivolous and for failure to state a claim, and granting him leave to amend. See Ord., ECF #8. Plaintiff claims that the denial of his parole is relevant to show a conspiracy against him and that Defendants are not subject to Eleventh Amendment immunity in their individual capacities. Plaintiff's Motion is DENIED.

Rule 60(b) permits reconsideration based on: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly-discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59; (3) fraud, misrepresentation, or misconduct by an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is

based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. See Fed. R. Civ. P. 60(b)(1)-(b)(6).

Reconsideration is generally appropriate in three instances: (1) when there has been an intervening change of controlling law; (2) new evidence has come to light; or (3) when necessary to correct a clear error or prevent manifest injustice. *Sch. Dist. No. 1J v. ACandS, Inc.*, 5 F.3d 1255, 1262 (9th Cir. 1993). A successful motion for reconsideration must demonstrate some reason that the court should reconsider its prior decision and set forth facts or law of a strongly convincing nature to induce the court to reverse its prior decision. *White v. Sabatino*, 424 F. Supp. 2d 1271, 1274 (D. Haw. 2006). Local Rule LR60.1 for the District of Hawaii implements these standards for reconsideration of interlocutory orders.

First, the court did not hold that the denial of parole cannot be used to show evidence of a conspiracy. Rather, the court stated that Plaintiff's conclusory allegations of conspiracy did not meet the heightened pleading standard required for conspiracy claims. See Ord., ECF #8 at 16. The court also held that Plaintiff has no right to notify the police when his parole is denied, and that his claims concerning the denial of parole do not belong with his claims concerning the conditions of

confinement in prison. *Id.* at 15.

Second, the court did not hold that Defendants are absolutely immune from suit under the Eleventh Amendment. Rather, the court held that claims for damages against official capacity Defendants are barred; Plaintiff may still bring damages claims against individual Defendants. *Id.*

Plaintiff provides no reason to reconsider the Order finding that his Complaint fails to state a claim as written. That is not to say that Plaintiff cannot proceed with his claim against Nurse Lydia for the alleged denial of medical care. He may do so *after* he dismisses his other claims that do not state a claim, or are duplicative, or are completely unrelated to this claim. The court suggests that Plaintiff reread the July 26, 2012 Order dismissing his Complaint so that he can better understand his options.

Petitioner's Motion does not set forth facts or law of a strongly convincing nature persuading this court to reverse its Order dismissing his Complaint with leave given to amend. Plaintiff's Motion is DENIED.

IT IS SO ORDERED.

DATED AT HONOLULU, HAWAII, August 27, 2012.



/S/ Leslie E. Kobayashi  
Leslie E. Kobayashi  
United States District Judge

*Tia v. Antonio, et al.*, 1:12-cv-00295 LEK-KSC; ORDER DENYING MOTION FOR  
RECONSIDERATION; psas\ recon\DMP\2012\Tia 12-295 lek (re. dsm C ftsc & friv)